

EXHIBIT 11
Excerpts from
Michael Bland
Deposition, Vol. I,
12/21/17

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * * * *

ESTATE OF TASHI S. FARMER
a/k/a TASHII FARMER a/k/a
TASHII BROWN, by and through
its Special Administrator,
Elia Del Carmen
Solano-Patricio; TAMARA
BAYLEE KUUMEALI'MAKAMAE
FARMER DUARTE, a minor,
individually and as
Successor-in-Interest, by and
through her legal guardian,
Stevandra Lk Kuanoni; ELIAS
BAY KAIMIPONO DUARTE, a
minor, individually and as
Successor-in-Interest, by and
through his legal guardian,
Stevandra Lk Kuanoni,

Plaintiffs,

Case No. 2:17-CV-01946-
vs. JCM-PAL

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, a political
subdivision of the State of
Nevada; OFFICER KENNETH
LOPERA, individually and in
his Official Capacity; and
Does 1 through 50, inclusive,

Defendants.

VIDEOTAPED DEPOSITION OF SERGEANT MICHAEL BLAND

Las Vegas, Nevada

December 21, 2017

Reported by: Kimberly A. Farkas, RPR, CCR #741

Job: 23499

SERGEANT MICHAEL BLAND

December 21, 2017

<p>1 A. Same. I've heard of him. There's a 2 good chance that they know me. And if I see them, 3 I would know them. But as far as name to face, 4 no.</p> <p>5 Q. Okay. First of all, let's do this. Let 6 me ask you to turn over to page 7 of 8. Let's 7 start with paragraph 2. Read that to yourselves 8 just for a moment. It begins, "According to her 9 statement, Officer Lif."</p> <p>10 Okay. Now, a consensual encounter is an 11 encounter where an officer attempts to interact or 12 communicate with a citizen without any probable 13 cause or suspicion of wrongdoing; correct?</p> <p>14 A. Yes.</p> <p>15 Q. And a citizen, upon a consensual 16 encounter, is free to talk to or not talk to an 17 officer; correct?</p> <p>18 A. Yes.</p> <p>19 Q. In fact, a citizen can walk away from a 20 consensual encounter without elevating the 21 consensual encounter by the act of him walking 22 away to reasonable suspicion of wrongdoing just by 23 them walking away?</p> <p>24 A. Say that one more time. Just the last 25 little bit was --</p>	<p>Page 22</p> <p>1 encounter, they can choose not to answer questions 2 and be there.</p> <p>3 Q. Now, look at the next paragraph, please.</p> <p>4 "LVMPD policy states an officer may 5 initiate a foot pursuit of any individual the 6 officer reasonably believes is about to engage in, 7 is engaging in, or has engaged in criminal 8 activity. As Officer Lopera began to chase" -- 9 (Interruption by telephone.)</p> <p>10 MR. McNUTT: We're five for five, Fred.</p> <p>11 MR. SAYRE: I don't know why that keeps 12 doing that.</p> <p>13 MR. McNUTT: I think it was Darren 14 calling him.</p> <p>15 MR. SAYRE: It's a consensual. There's 16 no reasonable suspicion it was going to go off 17 again.</p> <p>18 Q. Let me repeat.</p> <p>19 "LVMPD policy states that an officer may 20 initiate a foot pursuit of any individual the 21 officer reasonably believes is about to engage in, 22 is engaging in or has engaged in criminal 23 activity. As Officer Lopera began to chase 24 Farmer, he had no reasonable suspicion or probable 25 cause to believe that Farmer had been involved in</p>
<p>Page 23</p> <p>1 Q. Sure.</p> <p>2 A consensual encounter is based upon, 3 among other things, a lack of reasonable suspicion 4 of wrongdoing?</p> <p>5 A. Yes.</p> <p>6 Q. Or any probable cause; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And if a person chooses to walk away 9 from a consensual encounter, or run away, for that 10 matter, that act does not raise the consensual 11 encounter to a level of reasonable suspicion, just 12 the act of leaving?</p> <p>13 A. Walking away, yes, it does not.</p> <p>14 Q. Right.</p> <p>15 A. They are free to walk -- a consensual 16 encounter, they are free to walk away.</p> <p>17 Q. Okay. What about running away?</p> <p>18 A. Illinois versus Wardlow. If somebody 19 flees from police presence, depending on those 20 circumstances, there can be reasonable suspicion 21 of criminal activity.</p> <p>22 Q. Okay. What -- what other -- what about 23 walking fast away?</p> <p>24 A. If they're just leaving the consensual 25 encounter, you can -- if it was consensual</p>	<p>Page 25</p> <p>1 any criminal conduct."</p> <p>2 Do you agree with that statement?</p> <p>3 A. Do I agree that -- whether he had 4 reasonable suspicion, or do I agree with if there 5 is no reasonable suspicion, that you can't pursue?</p> <p>6 Q. The way I read the paragraph, the 7 officer who's writing it says that Officer Lopera 8 had no reasonable suspicion or probable cause to 9 believe that Farmer had been involved in any 10 criminal conduct.</p> <p>11 My question is do you agree with that?</p> <p>12 MR. McNUTT: Objection. Form.</p> <p>13 MR. ANDERSON: Objection. Form as well.</p> <p>14 BY MR. SAYRE:</p> <p>15 Q. You can answer.</p> <p>16 A. Just so I understand, do I agree with -- 17 if you're asking do I think Officer Lopera had 18 reasonable suspicion or --</p> <p>19 Q. Do I agree -- I'm asking you if you 20 agree with the statement by this officer who wrote 21 that.</p> <p>22 A. From what I see, I could see -- I see 23 enough to do a foot pursuit.</p> <p>24 Q. Okay. So you believe that there was 25 something -- there was something that caused</p>

SERGEANT MICHAEL BLAND

December 21, 2017

<p style="text-align: right;">Page 26</p> <p>1 Officer Lopera to have reasonable suspicion?</p> <p>2 A. I don't know what Officer Lopera because</p> <p>3 I never heard a statement from him. But looking</p> <p>4 at -- looking at the video, if I was that officer</p> <p>5 and I see a subject, you know, going into an</p> <p>6 employee-access-only area, then I would have</p> <p>7 enough suspicion to chase that guy.</p> <p>8 Q. So you do not agree with the statement</p> <p>9 in this arrest report, the one I just asked you to</p> <p>10 read, that paragraph; is that correct?</p> <p>11 A. I wouldn't say I don't agree because I</p> <p>12 don't know what Officer Lopera was -- was thinking</p> <p>13 and why he went after him.</p> <p>14 Q. So -- all right.</p> <p>15 A. I would have to hear what --</p> <p>16 Officer Lopera's reasoning for why he was chasing</p> <p>17 him. Did he think that going through an employee</p> <p>18 area only was, you know, suspicious.</p> <p>19 Q. I'm going to ask you to assume that this</p> <p>20 officer who was writing this never talked to</p> <p>21 Officer Lopera about why he did whatever he did,</p> <p>22 meaning that once there was a criminal charge in</p> <p>23 place, Officer Lopera would have exercised his</p> <p>24 Fifth Amendment privilege, and there would be no</p> <p>25 discussing it with this arresting officer.</p>	<p style="text-align: right;">Page 28</p> <p>1 area?</p> <p>2 A. That would be -- that would be my main</p> <p>3 concern.</p> <p>4 Q. Okay. And what would that crime be?</p> <p>5 A. Well, my main concern would be is he</p> <p>6 goes through that door and he stabs somebody, and</p> <p>7 I just pick up my coffee and I leave. Or he runs</p> <p>8 up to the 21st floor and starts firing a gun</p> <p>9 through a hotel window, and I just grab my coffee</p> <p>10 and I leave.</p> <p>11 Q. What crime would be involved in him</p> <p>12 running through an employee-access area?</p> <p>13 A. Well, if he was fleeing, you know.</p> <p>14 If -- once again, I don't know what the officer</p> <p>15 was necessarily trying to talk to him in the first</p> <p>16 place about, but it could be as simple as</p> <p>17 obstruction charge.</p> <p>18 Q. Obstruction of what?</p> <p>19 A. Well, if he's trying to, you know, talk</p> <p>20 to him. I don't know if he was under the</p> <p>21 influence of drugs. I don't know what the officer</p> <p>22 was thinking at that time.</p> <p>23 Q. Okay. Well, the information that is in</p> <p>24 this arrest report and that has been testified to</p> <p>25 by Officer Lif -- by the way, do you know Officer</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Yes.</p> <p>2 Q. So his statement here is based upon his</p> <p>3 examination of the videos and whatever other</p> <p>4 material that he's examined.</p> <p>5 Do you have any way to agree or disagree</p> <p>6 with his statement that -- that Officer Lopera had</p> <p>7 no reasonable suspicion or probable cause to</p> <p>8 believe that Farmer had been involved in any</p> <p>9 criminal conduct?</p> <p>10 MR. McNUTT: Objection. Form.</p> <p>11 MR. ANDERSON: Objection form, too.</p> <p>12 THE WITNESS: I was -- involved in</p> <p>13 criminal conduct or about to be involved in</p> <p>14 criminal conduct? You asked -- you asked whether</p> <p>15 he had any reasonable suspicion. I don't have all</p> <p>16 the facts that this investigator had, but I would</p> <p>17 disagree and say that based on what -- based on</p> <p>18 the information I have, that him running into an</p> <p>19 employee-access-only area and with his -- you</p> <p>20 know, the behavior you're seeing on the video, I</p> <p>21 would have reasonable suspicion to chase that</p> <p>22 person.</p> <p>23 BY MR. SAYRE:</p> <p>24 Q. Okay. Because he was -- primarily</p> <p>25 because he was running in an employee-only-access</p>	<p style="text-align: right;">Page 29</p> <p>1 Lif?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. She says that Mr. Farmer</p> <p>4 approached them, sweating profusely, and said, "Do</p> <p>5 you know where a water fountain is?"</p> <p>6 And they said, Well, walk around; you</p> <p>7 can probably find one. And they asked him, Why</p> <p>8 are you perspiring, and he said some people were</p> <p>9 following him or chasing him. And he asked if he</p> <p>10 could be escorted down to the valet, and they</p> <p>11 agreed.</p> <p>12 And, at that point, he started running</p> <p>13 or walking fast through the -- into the</p> <p>14 employee-only-access area. That's the information</p> <p>15 I'm going to ask you to assume.</p> <p>16 A. Okay.</p> <p>17 Q. All right. Based upon that information,</p> <p>18 did Officer Lopera have reasonable suspicion to</p> <p>19 chase and arrest Mr. Farmer?</p> <p>20 A. Based on that information, no.</p> <p>21 Q. Now, Officer Lopera -- take a look at</p> <p>22 the next-to-last paragraph on the page.</p> <p>23 A. The ECD one?</p> <p>24 Q. Yes, sir. "After cycling ECD seven</p> <p>25 times." Read that to yourselves, please.</p>

SERGEANT MICHAEL BLAND

December 21, 2017

<p>1 Okay. "After cycling the ECD seven 2 times." We'll stop there.</p> <p>3 Does Metropolitan Police policy allow an 4 officer to cycle an ECD seven times?</p> <p>5 A. Yes. However, the policy says after 6 three cycles of ECD, the device will be deemed 7 ineffective unless other specific circumstances 8 deem otherwise. Meaning, I go ahead and I 9 utilized the ECD three times. If -- if I still 10 haven't been able to take this person into 11 custody, typically, you're looking at, well, it's 12 something to do with the probe spread, the device 13 isn't working effectively. But -- do you want a 14 scenario?</p> <p>15 Q. Go ahead.</p> <p>16 A. Okay. An example -- a hypothetical 17 example of where I would be perfectly fine using 18 an ECD more than three times and still be within 19 policy was, let's say, I'm a 110-pound officer. I 20 have a 400-pound, you know, subject I'm trying to 21 take into custody. The person is coming at me, 22 trying to -- you know, trying to hit me. I 23 utilized my ECD. It's effective. The person goes 24 down. Okay. I'm by myself, so I can't handcuff, 25 you know, by myself in the situation.</p>	<p>Page 30</p> <p>1 the way I'm wording it is probably pretty close. 2 Q. Okay. Did you see some reason in 3 this -- looking at the two videos, some reason why 4 Officer Lopera should have recycled seven times? 5 A. No. 6 Q. Was his -- was his recycling of the ECD 7 seven times, in your opinion, outside of policy? 8 A. Yes. 9 Q. And the last time he recycled was nine 10 seconds in length. Is it correct that the 11 Metropolitan Police Department does not allow you 12 to cycle for more than five seconds each time? 13 A. Yes and no. No -- I -- we deploy a 14 taser, one cycle is five seconds. At that point, 15 you need to reassess. There are specific 16 situations where I can hold that trigger and go 17 longer than five seconds. 18 You want another example? 19 Q. Sure. 20 A. Okay. I have somebody who has a knife. 21 Q. Yeah. 22 A. They have -- they have a knife. I go 23 ahead and I utilize the taser. They -- my partner 24 is there. I want my partner to go and cuff them 25 under power and basically take them into custody,</p>
<p>Page 31</p> <p>1 The five seconds ends. The guy stands 2 back up. He starts to do the exact same thing. I 3 hit him again with the ECD. I'm still waiting for 4 my backup. He goes down.</p> <p>5 Five seconds goes. He gets back up. 6 Guy coming at me again. I hit him. I'm still 7 waiting for my backup. Now I've been at it three 8 times. I've used three cycles of the ECD. Person 9 goes down. And now he gets up a fourth time. 10 There's no expectation that now I have to go put 11 my taser away and deal with this person hands-on.</p> <p>12 So that would be a specific situation 13 where I could go ahead and I could tase him a 14 fourth time if I'm waiting for my backup and his 15 behavior hasn't changed each time he gets up.</p> <p>16 The policy -- what policy says is after 17 three times it will be deemed ineffective 18 unless -- I have to look exactly how it was 19 worded, but it basically says after three times, 20 it will be deemed ineffective unless there's 21 specific circumstances that we articulate.</p> <p>22 Q. Do you recall what the specific 23 circumstances are that the policy says will allow 24 you to go past three times?</p> <p>25 A. It doesn't say what they are. I think</p>	<p>Page 33</p> <p>1 but my partner is running up there. 2 My concern is as my partner gets up 3 there to start handcuffing, the five seconds ends, 4 and now my partner is in close proximity of that 5 knife. So in that situation, I would hold that 6 trigger down. If I knew my partner was going in 7 there, the knife is still either in close 8 proximity or in hand, my partner is going into a 9 handcuff, I'm going to hold that trigger down 10 until that knife is away. And then I'll go in. 11 So it might go 6, might go 7 seconds. 12 It's a fairly rare situation, but there are 13 situations where you could articulate and justify 14 doing longer than five seconds.</p> <p>15 Q. Did you see any reason why Mr. -- 16 Officer Lopera would be justified in using his ECD 17 on the last -- ECW on the last occasion for nine 18 seconds?</p> <p>19 A. I do not.</p> <p>20 Q. Do you believe that was out of policy?</p> <p>21 A. Yes, I do.</p> <p>22 Q. Take a look at this book, if you would. 23 Page 162. And, I'm sorry, it's a little bit 24 confusing, but if you look, there's Bates stamps. 25 And the last Bates stamp before 162 is 155. And</p>

SERGEANT MICHAEL BLAND

December 21, 2017

Page 34	Page 36
1 before that is LVMPD0267.	1 MR. SAYRE: Yes.
2 A. Oh, sorry. I was way too far deep.	2 MR. ANDERSON: Okay. Then go ahead.
3 Q. No. That's okay.	3 MR. SAYRE: I'll sing out when we get to
4 A. I'm sorry. You said 162?	4 the California POST.
5 Q. Okay. 162.	5 MR. McNUTT: It's got your Bates label
6 A. I'm on 162.	6 on it.
7 Q. Okay. It says, "Personnel should use an	7 BY MR. SAYRE:
8 ECW for one standard cycle of five seconds and	8 Q. It says, at the bottom, "POST Ethical
9 then evaluate the situation to determine if	9 Use of Force 2015." It also says "2011 Electronic
10 subsequent cycles are necessary."	10 Control Weapon Guidelines."
11 You agree with that?	11 A. Yeah, this right here isn't from our --
12 A. Yes.	12 I've seen the statement, though, as far as "may
13 Q. "Personnel should consider that	13 increase risk of the death or serious injury."
14 exposures to ECW for longer than 15 seconds,	14 Q. Right.
15 whether due to multiple applications or continuous	15 A. And that is what we -- that is what we
16 cycling, may increase the risk of death or serious	16 teach.
17 injury."	17 Q. Right. Any subsequent application
18 Do you agree with that?	18 should be independently justified; correct?
19 A. I'm not a doctor, but I've seen this	19 A. Yes.
20 statement before.	20 Q. In fact, after the first five seconds of
21 Q. Is that the policy of the Metropolitan	21 application, each five seconds thereafter has to
22 Police Department?	22 be independently justified?
23 A. Is this our policy right here we're	23 A. Yes.
24 looking at?	24 Q. Do you believe that any of the
25 Q. In part.	25 applications of the ECW by Officer Lopera were
Page 35	Page 37
1 MR. ANDERSON: I'd object. It's not --	1 justified?
2 I think it's POST.	2 A. I could see the first one.
3 MR. SAYRE: It's POST. Yeah. Sorry.	3 Q. Okay. After that?
4 MR. ANDERSON: This is not the LVMPD	4 A. Not that I see.
5 policy.	5 Q. Okay. So the subsequent applications
6 BY MR. SAYRE:	6 would be out of policy?
7 Q. Is POST a --	7 A. In my opinion, yes.
8 A. Oh, this is our lesson plan?	8 Q. Right. And "out of policy" means
9 Q. Yeah. Is POST recognized as	9 unreasonable?
10 authoritative by the Metropolitan Police	10 A. Yes.
11 Department?	11 MR. McNUTT: Objection. Form.
12 A. Yes. I believe this is -- I believe	12 BY MR. SAYRE:
13 this is our --	13 Q. Now, take a look, if you would, please,
14 MR. ANDERSON: Part of it. It was a	14 at 0616. It's two or three pages over.
15 whole bunch of different documents put together.	15 A. I'm there.
16 THE WITNESS: Okay. I know this is --	16 Q. Okay. This is from a book or treatise
17 this is our lesson plan right here, but this --	17 by James W. Lindell.
18 this page just looks --	18 Do you know who that is?
19 MR. ANDERSON: Just so we're clear, what	19 A. Yes.
20 he's looking at is California POST; correct?	20 Q. Okay. He's one of the two principal
21 MR. SAYRE: Actually, he's looking at	21 authors of the -- the NVRD, right, the --
22 whatever you produced to me. This is not the	22 A. LVNR.
23 California POST.	23 Q. LVNR. Sorry.
24 MR. ANDERSON: Okay. This is what I	24 Now, it says here, if you look about --
25 produced?	25 down about, say, the third paragraph, small

SERGEANT MICHAEL BLAND

December 21, 2017

Page 38	Page 40
<p>1 paragraph. "The two greatest problems with police 2 neck restraint are that officers often" -- "are 3 often not taught how to regulate control of a 4 subject by the neck and when to stop compression 5 on a subject's neck."</p> <p>6 Do you agree with that?</p> <p>7 A. I would say the biggest problem with 8 neck restraints are if they're wrongly applied.</p> <p>9 Q. Okay. Let's take a look at what I now 10 am going to refer to as POST -- California POST 11 documents. And they're near the end of the 12 booklet.</p> <p>13 Take a look at -- it says "Basic Course 14 Workbook Series Learning Domain 20, Use Of Force."</p> <p>15 Do you see that?</p> <p>16 A. Do you have a page?</p> <p>17 Q. It doesn't have a page.</p> <p>18 A. Oh, I'm sorry. That's it?</p> <p>19 Q. That's it. And then turn over -- the 20 next page is 6-4, Learning Domain 20, Chapter 6-4.</p> <p>21 Do you have that?</p> <p>22 A. I'm sorry. One more time.</p> <p>23 Q. Sure. It's Learning Domain -- down at 24 the bottom, it says, "LD 20, Chapter 6, 25 Consequences of Unreasonable Force." It's the</p>	<p>1 A. Yes. 2 Q. Do you agree with that? 3 A. "Intervention" can mean a lot of things 4 beyond that. But as far as within police work and 5 duty to intervene, yes.</p> <p>6 Q. All right. Do you teach, at the 7 Metropolitan Police Department, that if somebody 8 is engaged in unreasonable or unnecessary force, 9 that it is a duty of another officer to intervene?</p> <p>10 A. Yes. If it was reasonably -- they're 11 reasonably able to.</p> <p>12 Q. All right. And what does that mean, 13 "reasonably able to"?</p> <p>14 A. There's no expectation that you get in a 15 physical fight with an officer to stop them from 16 doing what they're doing. But if you're in a 17 position -- you're in a position where you can 18 stop somebody who is using unreasonable force, 19 then you're supposed to do it.</p> <p>20 Q. Okay. Now, suppose that somebody has 21 put a hold on the neck of an individual. Could be 22 either an LVNR or it could be a rear naked choke. 23 And after 27 seconds, it's recognized by an 24 officer who is close by that the subject has gone 25 unconscious. Right? Got that so far?</p>
<p>1 very next page. Yeah. You've got it right there. 2 A. This says 4-8. 3 Q. 6-4. 4 A. Maybe I'm completely on the -- 5 Q. Maybe I've done something wrong. 6 MR. ANDERSON: No. We have 4-8. 7 MR. SAYRE: Oh, yeah, the previous one. 8 THE WITNESS: Okay. Here we go. 9 BY MR. SAYRE: 10 Q. Okay. All right. It says, 11 "Unreasonable force occurs when the type, degree, 12 and duration of force employed was not necessary 13 or appropriate." 14 Do you agree with that? 15 A. I'd agree with that. 16 Q. Okay. Is that -- do you teach that? 17 A. Not that specific verbiage. 18 Q. Okay. 19 A. But same concepts. 20 Q. Look at the next page, please, which is 21 6-7. It's titled "Failure to Intervene." 22 It says, "Intervention is the act of 23 attempting to prevent or attempting to stop the 24 inappropriate or unlawful behavior of another." 25 Do you see that?</p>	<p>1 A. Yes. 2 Q. All right. And the officer that has got 3 the chokehold on him, whether it was an LVNR or a 4 rear naked choke or whatever, continues to apply 5 that same choke on the individual for another 47 6 seconds. Okay? 7 A. Yes. 8 Q. Is that unreasonable force by the 9 officer that's applying the choke after he's been 10 told to let go? 11 A. If the officer -- if the officer knows 12 that that person is unconscious and, he continues 13 to hold, yes, that would be unreasonable. 14 Q. Okay. Now, if the officer tells him, 15 the attending officer, the close by, says, "Let 16 him go," and the officer refuses and continues to 17 apply the hold for another 47 seconds, does the 18 officer who has seen that the guy has gone 19 unconscious, subject, does he have a duty to 20 further intervene besides simply saying, "Let him 21 go"?</p> <p>22 A. Yes. If he's recognizing that the 23 person is unconscious, and he -- he's telling him 24 to let him go because he is unconscious, and he's 25 not letting go, he's going to have to take some</p>

SERGEANT MICHAEL BLAND

December 21, 2017

<p style="text-align: right;">Page 42</p> <p>1 type of further effort, tell him again or start 2 to -- you know, grabbing his arm, say, "Hey, let 3 go, let go."</p> <p>4 Q. Okay. So if he's told him once after 27 5 seconds, does there begin to develop a danger of 6 serious injury or death if the man is unconscious, 7 the subject?</p> <p>8 MR. ANDERSON: Objection. Form. 9 Go ahead.</p> <p>10 THE WITNESS: Once again, not a doctor. 11 I would say it was unreasonable to continue 12 holding it.</p> <p>13 BY MR. SAYRE: 14 Q. All right. 15 A. As far as if it's a -- if he's 16 continuing to squeeze for another 20 seconds. 17 Q. Another 47 seconds. 18 A. -- oh, sorry, 47 seconds, obviously, 19 there's going to be an increased risk of some type 20 of injury occurring. 21 Q. Such as death? 22 A. I'm not a doctor. I mean, could be. 23 I've seen people held in neck restraints, you 24 know, in -- in training and fights for long 25 periods of time. But if he is unconscious,</p>	<p style="text-align: right;">Page 44</p> <p>1 roll them over. 2 But as soon as I'm no longer in a 3 position of disadvantage, then I would let go. 4 We're talking very -- very, very, you know, 5 short -- short timeframe. 6 Q. How short? 7 A. Couple seconds. 8 Q. All right. Beyond that, is that 9 unreasonable force? 10 A. The -- yes. 11 Q. Continuing to hold a subject in a neck 12 restraint when they have gone unconscious. 13 A. Yes. Unless there's, you know, 14 specific -- once again, the guy's on top of me on 15 my back. It could take, two, three, four seconds 16 for me to roll him over, but just continuing to 17 arbitrarily hold onto the neck restraint, yes -- 18 Q. Once the subject has gone unconscious, 19 is it unreasonable force to continue to apply the 20 neck restraint for another 47 seconds? 21 A. Yes. 22 Q. And does that put the subject in danger 23 of death? 24 MR. ANDERSON: Objection. Form. 25 THE WITNESS: Once again, goes back to</p>
<p style="text-align: right;">Page 43</p> <p>1 obviously it's a -- I'm sure -- I would assume 2 that that would be a potential. 3 Q. Have you seen people held in neck 4 restraints for a long period of time after they've 5 been rendered unconscious? 6 A. I have not seen -- I've read a report 7 once, when first doing studies on neck restraints, 8 and they put basically inflated -- almost like an 9 inflated pillow that would basically render 10 somebody unconscious very, very quick, just 11 basically to study the effects. And people were 12 held in those for, you know, up to -- up to a 13 minute, and there wasn't any -- according to the 14 report I read, there wasn't any -- they didn't 15 die. 16 Q. Does the Metropolitan Police Department 17 teach that you can hold somebody up to a minute in 18 a neck restraint if they have gone unconscious? 19 A. No. Absolutely not. 20 Q. Does the Metropolitan Police Department 21 teach that you can hold somebody in a neck 22 restraint for any length of time after he's gone 23 unconscious? 24 A. No. With the exception of just person 25 goes unconscious, they're still on top of me, and</p>	<p style="text-align: right;">Page 45</p> <p>1 the same thing. I'm not a medical doctor. But we 2 would teach -- we would teach that per training 3 material, yes. 4 BY MR. SAYRE: 5 Q. If an officer tells a person that's 6 applying a neck hold, compression hold, whether it 7 be a lateral vascular neck restraint or a rear 8 naked choke, that a person has gone unconscious 9 and to let him go, and the officer continues to 10 maintain that hold unabated, does the officer have 11 a responsibility to go in and pull the person's 12 hands off of the neck of the subject? 13 A. Yes. If he's recognizing that he's 14 still applying it, if he -- he says, "Hey, let go 15 of the neck restraint." He sees the guy is 16 unconscious, and he's recognizing that he is 17 actually still doing -- not, you know, grabbing 18 legs or doing whatever else, but he recognizes 19 that he's still doing it, then, yes, he has a duty 20 to take further efforts to stop that neck 21 restraint. 22 Q. And if that officer, the one who has the 23 duty to intervene, fails to intervene, is that a 24 violation of the Fourth Amendment federal civil 25 right?</p>

SERGEANT MICHAEL BLAND

December 21, 2017

	Page 46		Page 48
1	MR. McNUTT: Objection. Form.	1	Q. Okay. So is it fair to say, then, that
2	MR. ANDERSON: Objection. Form.	2	the Las Vegas Metropolitan Police Department does
3	THE WITNESS: That I don't -- I don't	3	not teach its officers that to fail to intervene
4	know. I can tell you the answer to policy.	4	when a person is engaged in an unlawful action of
5	BY MR. SAYRE:	5	unreasonable force on an individual is a violation
6	Q. Take a look at page 6-8, where it says,	6	of the Fourth Amendment to the United States
7	"Fifth Amendment Protection."	7	Constitution?
8	A. Yes.	8	MR. McNUTT: Objection to form.
9	Q. "The United States Constitution protects	9	MR. ANDERSON: Objection. Form.
10	individuals from unlawful actions of peace	10	THE WITNESS: Yeah, I don't know. I
11	officers."	11	don't know if that's something that's -- that's
12	Now, you're trained in the Fourth	12	covered. Like I say, we cover it as far as -- as
13	Amendment; right?	13	far as an aspect of policy. That's how we --
14	A. Yes.	14	BY MR. SAYRE:
15	Q. "Note: The officer who fails to	15	Q. Okay. Do you agree that the
16	intervene for whatever reason is also held	16	Metropolitan Police Department teaches that
17	accountable by the United States Code."	17	unreasonable force is a violation of the Fourth
18	Do you agree with that?	18	Amendment --
19	A. If that's what it says in -- where in	19	A. Yes.
20	the Fourth Amendment does it actually say that	20	Q. -- of the United States Constitution?
21	phrase?	21	A. Yes.
22	Q. To the left of the phrase, it says	22	Q. What you don't know is whether the
23	"Fourth Amendment Protection."	23	failure to intervene when someone is engaged in
24	A. No, no. I understand -- I understand	24	unreasonable force is taught by the Metropolitan
25	that. But is that phrase in the actually in the	25	Police Department to be also a violation of the
	Page 47		Page 49
1	Fifth Amendment?	1	Fourth Amendment?
2	Q. No. This is a statement.	2	A. Yes.
3	A. Oh, okay.	3	Q. Okay. How long have you -- how long did
4	Q. Fourth Amendment doesn't say if you're	4	you teach issues of Fourth Amendment protection
5	holding a person in a compression neck hold past	5	for the Nevada Metropolitan Police Department?
6	the time that they become unconscious, that it	6	A. I've taught use of force for 10 years.
7	becomes a violation of the Fourth Amendment.	7	Q. Okay. And you do -- as you sit here,
8	A. No. I'm just saying --	8	you do not remember whether the Metropolitan
9	Q. This is -- this is a book which is part	9	Police Department has ever taught, in those 10
10	of the basic course material of the California	10	years that you're aware of, that the failure to
11	Commission on Peace Officers Standards and	11	intervene when a person is engaged in unreasonable
12	Training. California POST.	12	force against a subject is a violation of the
13	A. Yes.	13	federal -- of Fourth Amendment civil rights?
14	Q. Do you know California POST to be	14	MR. ANDERSON: Objection. Form.
15	different from Nevada POST?	15	THE WITNESS: Reward.
16	A. I don't know what's in California POST.	16	BY MR. SAYRE:
17	Q. Okay. Well, does Nevada POST teach that	17	Q. I'll try.
18	it's a Fourth Amendment violation to fail to	18	Is it your testimony that you cannot
19	intervene if a person is engaged in unlawful	19	remember in those 10 years whether the
20	action, a peace officer?	20	Metropolitan Police Department has taught that it
21	A. I don't know. What we teach as far as	21	is a violation of the Fourth Amendment rights of
22	policy -- as far as policy, that we have a duty to	22	an individual for an officer to fail to intervene
23	intervene. But as far as being a Fourth Amendment	23	when the first officer is engaged in unreasonable,
24	violation for that officer who doesn't intervene,	24	unnecessary force?
25	I haven't taught that.	25	A. Yes, we haven't -- we haven't taught the

SERGEANT MICHAEL BLAND

December 21, 2017

Page 50	Page 52
<p>1 duty to intervene as a Fourth Amendment -- as a 2 Fourth Amendment standard.</p> <p>3 Q. Okay. Take a look at page -- look at -- 4 this would be Learning Domain 20, Chapter 4-10.</p> <p>5 A. I'm there.</p> <p>6 Q. Okay. It says, "The potential hazards 7 of improperly applied hold."</p> <p>8 Do you see that up in the left margin?</p> <p>9 A. Yes.</p> <p>10 Q. It says, "If the carotid restraint hold 11 is not properly applied, the risk of injury to the 12 subject increases."</p> <p>13 Do you agree with that?</p> <p>14 A. Yes.</p> <p>15 Q. "The following charts illustrate some of 16 the possible dangers of an improperly applied 17 hold." It says, "Improper action. Maintaining 18 compression after subject has been rendered 19 unconscious."</p> <p>20 Do you agree that that is a potential 21 danger of an improperly applied carotid restraint 22 hold?</p> <p>23 A. Holding onto a neck restraint too long?</p> <p>24 Q. Yes.</p> <p>25 A. As far as being a danger?</p>	<p>1 A. I'm making that assumption. 2 Q. Okay. All right. 3 All right. Let's go back to the -- the 4 arrest report, please. 5 A. Okay. 6 Q. Take a look at page 5 of 8. And look 7 where it says 2:58. 8 Do you find that? 9 A. Yes. 10 Q. Okay. Now, just for the purposes of 11 understanding, this means 2 minutes and 58 seconds 12 from the time that the body camera was turned on. 13 A. Yes. 14 Q. Okay. It says, "Officer Lopera appeared 15 to put Farmer in some type of neck restraint." 16 Now, let me stop there. 17 Did you see in either of the videos 18 Officer Lopera putting Mr. Farmer into some type 19 of neck restraint? 20 A. The video -- the best video that can 21 kind of show that is the security camera. I'm 22 making estimations. Couple hundred feet away. 23 Maybe hundred feet away. I don't know. 24 Q. It was farther away than -- 25 A. Okay. It's fairly -- at a fair</p>
Page 51	Page 53
<p>1 Q. Yes. 2 A. Yes. 3 Q. Look at the next page, which is 4-11. 4 It says, "Police officers must take appropriate 5 precautions to ensure the subject's recovery." It 6 says, "Action. Release the hold. Maintaining the 7 hold beyond the time the subject loses 8 consciousness can lead to physical complications 9 for the subject."</p> <p>10 Do you agree with that?</p> <p>11 A. What -- I mean, what physical 12 complications specifically?</p> <p>13 Q. Well, brain damage or death.</p> <p>14 A. And, once again, not a medical doctor. 15 We should be -- we should be letting go once they 16 go unconscious.</p> <p>17 Q. And why should you be letting go once 18 they go unconscious?</p> <p>19 A. Because you can't really resist at that 20 point. And, obviously, something can -- you know, 21 it's not healthy.</p> <p>22 Q. Well, like what is not healthy about it?</p> <p>23 A. To hold somebody in a neck restraint for 24 too long. It can lead to physical complications. 25 Q. All right.</p>	<p>1 distance. You can see an arm. You can make out 2 what arm goes around his neck. Can't really see 3 any -- looks like another arm is on top of his 4 head. It appears that he's putting him in a neck 5 restraint. 6 Q. Okay. You've been trained in how to 7 apply a lateral vascular neck restraint? 8 A. Yes. 9 Q. Okay. And what was the length of your 10 initial training, how many hours? 11 A. 12 hours. 12 Q. And then you're required to be retrained 13 every year for four hours? 14 A. We do two hour -- we do two-hour 15 quarterly. 16 Q. "Two-hour quarterly," what does that 17 mean? 18 A. We have quarterly defensive tactics, so 19 each quarter we have defensive tactics we put out 20 that our defensive tactics instructors, they teach 21 their squad. So we have one quarter that's 22 devoted to LVNR each year. 23 Q. Okay. So that means two hours a year? 24 A. Yes. 25 Q. Okay. Why two as opposed to four?</p>

SERGEANT MICHAEL BLAND

December 21, 2017

<p>1 A. That's a decision made by the 2 department.</p> <p>3 Q. Okay. Do you know that four is the 4 recommended time for retraining each year by 5 Mr. Lindell?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Why is that not followed?</p> <p>8 A. Once again, it's a -- the department. 9 That's a department decision. Above my pay grade.</p> <p>10 Q. Okay. Did they specifically and 11 intentionally decide not to do four hours per 12 year?</p> <p>13 A. We used to do -- we used to do four 14 hours, and then I'm guessing four or five -- four 15 or five years ago, maybe, they switched back down 16 to two hours. Or not switch it back. They made 17 it two hours.</p> <p>18 We do eight hours of quarterly training 19 a year, and I believe the thought process was half 20 of that time is devoted to LVNR doesn't give 21 enough time to devote to other areas of defensive 22 tactics.</p> <p>23 Q. All right. So they lessened up on the 24 amount of retraining training each year for LVNR 25 approximately four or five years ago?</p>	<p>Page 54</p> <p>1 ears up, I see an arm or a hand. That's the best 2 I can make out.</p> <p>3 Q. All right.</p> <p>4 A. And if it was an LVNR, I wouldn't see 5 the hand there.</p> <p>6 Q. If it was a rear naked choke, you 7 wouldn't see the hand there either; correct?</p> <p>8 A. No. I could.</p> <p>9 Q. All right. You're saying a rear naked 10 choke would have a hand on top of the head?</p> <p>11 A. Sometimes.</p> <p>12 Q. Tell me about your training in applying 13 a rear naked choke.</p> <p>14 A. I'm a third-degree black belt in 15 Brazilian jujitsu. Been doing Brazilian jujitsu 16 since 1996. I've -- I've coached everybody from 17 kids to, you know, recreational, people doing 18 classes, to professional fighters. So, you know, 19 I've cornered fighters. I'm a judge for -- I'm a 20 sanctioned judge for mixed martial arts, so I have 21 a bit of experience with rear naked chokes.</p> <p>22 Q. Have you ever applied a rear naked choke 23 to a suspect?</p> <p>24 A. No.</p> <p>25 Q. Can you say conclusively that the hold</p>
<p>Page 55</p> <p>1 A. It might be longer ago than that. I 2 don't -- that information I don't have in front of 3 me. But we used to teach for four hours. We used 4 to do research for four hours. Now we do two 5 hours.</p> <p>6 Q. Have you applied a lateral vascular neck 7 restraint hold?</p> <p>8 A. Yes.</p> <p>9 Q. Against a subject?</p> <p>10 A. Yes.</p> <p>11 Q. All right. How many times?</p> <p>12 A. Against a suspect? Maybe twice. Long 13 time ago.</p> <p>14 Q. Can you tell by looking in the video 15 whether Officer Lopera is applying a lateral 16 vascular neck restraint?</p> <p>17 A. From what I can see in the video, I 18 don't see an LVNR being applied.</p> <p>19 Q. Okay. What do you see?</p> <p>20 A. It's hard to -- it's hard to tell 21 because I can't see every aspect of the arms. But 22 I can see an arm encircles his neck. And I can 23 see a hand or an arm that looks like it's on the 24 top of his head or on some portion of the top 25 portion of his head. Somewhere from the nose up,</p>	<p>Page 55</p> <p>1 that you see in this distant video is a rear naked 2 choke as opposed to simply a poorly applied 3 lateral vascular neck restraint?</p> <p>4 A. Can -- I'm sorry. Rephrase that.</p> <p>5 Q. Sure.</p> <p>6 Can you say conclusively that the hold 7 that you see at some distance in the video is a 8 rear naked choke as opposed to a poorly applied 9 lateral vascular neck restraint?</p> <p>10 A. No, I could not say conclusively that 11 it's a rear naked choke.</p> <p>12 Q. Okay. It could be a poorly applied 13 lateral vascular neck restraint?</p> <p>14 A. Yes.</p> <p>15 Q. Let's go back to the paper again.</p> <p>16 You see it says that Officer -- at 2:58, 17 "Officer Lopera appeared to put Farmer in some 18 type of a neck restraint."</p> <p>19 At 3:13, it says, "Officer Lopera asked, 20 'Is he out yet?'"</p> <p>21 How is an officer trained by the 22 Metropolitan Police Department to determine 23 whether or not a subject has been rendered 24 unconscious by a lateral vascular neck restraint?</p> <p>25 A. How is the department trained --</p>

SERGEANT MICHAEL BLAND

December 21, 2017

Page 58	Page 60
<p>1 Q. What is the training? What is the 2 procedure the department teaches to officers of 3 how to determine whether a person has gone 4 unconscious from the application of a lateral 5 vascular neck restraint?</p> <p>6 A. For the most part, we teach -- if they 7 cease to resist, meaning there's no more -- their 8 body's -- their body's relaxed, their body has 9 become relaxed, you can feel that they're -- you 10 know, if somebody is here, and now they're out, 11 and they're no longer using, you know, muscle or 12 physical resistance, to go ahead and -- whether to 13 hold himself up or whether to resist.</p> <p>14 Q. How are you able to be sure that a 15 person has gone unconscious simply because they're 16 not actively resisting?</p> <p>17 A. I mean, from where you're at, you 18 would -- you may not know.</p> <p>19 Q. Okay. Is it appropriate for 20 Officer Lopera to be asking "is he out yet" at 21 3:13?</p> <p>22 A. Yeah, if he wants to know if he's out, 23 that would be --</p> <p>24 Q. Right.</p> <p>25 A. If his intention -- by him saying is his</p>	<p>1 A. Neither. It could be both. 2 Q. They could be unconscious or they could 3 be conscious? 4 A. Yes. 5 Q. So the Metropolitan Police Department 6 doesn't teach what to do if a subject gasps while 7 a lateral vascular neck restraint is being 8 applied? 9 A. No. We don't specifically, when you 10 hear a gasp, you do this. A gasp could be just 11 somebody breathing. It could be somebody 12 struggling. 13 Q. Sure. Or it could be somebody dying. 14 A. It could be somebody who's having a hard 15 time breathing. 16 Q. Have you ever heard of an agonal breath? 17 A. I've heard that term before. 18 Q. Do you know what it means? 19 A. Isn't that like the last breath? 20 Q. Last breath, yeah. 21 Does the department have any teaching 22 with regard to agonal breaths? 23 A. I don't know. I mean, I've heard that 24 term before, so maybe it was brought up in some 25 type of class. But it's not something we teach</p>
<p>1 intention -- I don't know if his intention was to 2 put him out or not. But if he's trying to get 3 confirmation on whether he's unconscious, then, 4 yeah, there would be nothing wrong with asking 5 that.</p> <p>6 Q. All right. Who would he be asking, do 7 you know?</p> <p>8 A. I would assume he'd be asking a partner 9 or if somebody else there was helping.</p> <p>10 Q. Well, it says at 3:01, "Sergeant 11 Crumrine arrived and stated, 'Put your fucking 12 hands behind your back.'"</p> <p>13 Presumably Officer Crumrine would have 14 been there for about 12 seconds when Lopera says, 15 "Is he out yet?"</p> <p>16 A. Yes. So I would assume he'd be asking 17 him.</p> <p>18 Q. Okay. And then it says, "Farmer gasps." 19 What does the Metropolitan Police 20 Department teach with regard to a subject gasping, 21 if anything?</p> <p>22 A. We don't have a particular training 23 protocol for gasps.</p> <p>24 Q. Does that mean that a person is 25 conscious or unconscious?</p>	<p>1 within defensive tactics. 2 Q. Okay. At 3:18, "Officer Lopera asks, 3 'Is he out yet?'" 4 Appropriate for him to be asking that? 5 A. Yeah. If he's trying to get -- if his 6 intention, he's trying to put him out -- 7 Q. Right. 8 A. -- and he's trying to get 9 confirmation -- 10 Q. Right. 11 A. -- there's nothing wrong with him asking 12 that question. 13 Q. Does the department teach this as a way 14 of determining whether somebody has been rendered 15 unconscious by the application of a lateral 16 vascular neck restraint? 17 A. We don't teach -- as far as -- we don't 18 teach a methodology saying officers will ask their 19 partner if they are out. 20 Q. What is the methodology that's taught by 21 the Metropolitan Police Department for an officer 22 to determine, while he's applying a lateral 23 vascular neck restraint, whether the person, the 24 subject, has gone unconscious? 25 A. That we cease -- we cease applying</p>

SERGEANT MICHAEL BLAND

December 21, 2017

<p style="text-align: right;">Page 62</p> <p>1 compression once we either gain compliance or 2 there's no further resistance.</p> <p>3 Q. Okay. At 3:19, "Officer Lopera asks, 4 'Is he out yet?'" again.</p> <p>5 A. Same answer.</p> <p>6 Q. Right. 3:25, it says, "Officer Tran 7 arrived and said, 'Let him go, Ken.'"</p> <p>8 Now, I've been told that that probably 9 was actually Sergeant Crumrine. Either way, it's 10 appropriate for either Crumrine or Tran to tell 11 him to let him go if he's unconscious?</p> <p>12 A. Yes.</p> <p>13 Q. All right. At 3:26, "Lopera asks, 'Are 14 you sure?'" And it says, "Officer Tran replied, 15 'Yeah.'"</p> <p>16 So now he's got double confirmation that 17 he's unconscious and should let go; right?</p> <p>18 A. Yes.</p> <p>19 Q. All right. Then if you look down at 20 4:11, which is 46 seconds later, "Officer Lopera 21 released the hold on Farmer."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Would you agree that that was 25 unreasonable force being exerted by Officer Lopera</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. What you don't know is whether that 2 would also be a violation of the Fourth Amendment 3 because the Metropolitan Police Department doesn't 4 teach that?</p> <p>5 MR. ANDERSON: Objection. Form.</p> <p>6 THE WITNESS: Yeah, going back to that, 7 it's just not a specific thing, we say, "You're 8 violating the Fourth Amendment by not 9 intervening." So we don't -- that's not something 10 we have been teaching.</p> <p>11 MR. SAYRE: Okay. Could we take a short 12 break, please?</p> <p>13 MR. ANDERSON: Absolutely.</p> <p>14 THE VIDEOGRAPHER: We are off the record 15 at 3:06 p.m.</p> <p>16 (Whereupon, a recess was taken.)</p> <p>17 THE VIDEOGRAPHER: Back on the record.</p> <p>18 The time is 3:11 p.m.</p> <p>19 BY MR. SAYRE:</p> <p>20 Q. All right. Take a look at paragraph 21 number 4 on page 7 of 8.</p> <p>22 A. It starts "Officer Lopera continued"?</p> <p>23 Q. Yes, sir. Just read that paragraph to 24 yourselves, yeah.</p> <p>25 A. I've read it.</p>
<p style="text-align: right;">Page 63</p> <p>1 for those 46 seconds if, in fact, Mr. Farmer was 2 unconscious at 3:25?</p> <p>3 MR. McNUTT: Objection to form.</p> <p>4 THE WITNESS: If he was still applying 5 compression, yes.</p> <p>6 BY MR. SAYRE:</p> <p>7 Q. Okay. Would you agree that whether it 8 was Officer Tran or Sergeant Crumrine who stated, 9 "Let him go, Ken," that that officer would have 10 been obligated to intervene to prevent Mr. Lopera 11 from continuing to compress his neck for the next 12 46 or 47 seconds?</p> <p>13 MR. ANDERSON: Objection. Form.</p> <p>14 THE WITNESS: Yes. If he's -- if the 15 officer believes that he is still applying 16 compression.</p> <p>17 BY MR. SAYRE:</p> <p>18 Q. Right.</p> <p>19 A. If the officer believes he's still 20 applying compression and -- he has a duty to 21 intervene.</p> <p>22 Q. And if he didn't intervene, that would 23 be a violation of policy of the Metropolitan 24 Police Department?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. All right. In assessing whether or not 2 there was an attempted carjacking, is it important 3 to know whether or not the driver of the vehicle 4 felt threatened by Mr. Farmer?</p> <p>5 A. You would have no way of knowing -- 6 well, not in every case, I guess you would have no 7 way of knowing. It wouldn't necessarily be a 8 consideration.</p> <p>9 Q. Would it be evidentiary as to whether or 10 not a crime had been committed? Do you understand 11 what I mean by "evidentiary"?</p> <p>12 A. Yes. But as far as the rest, it was 13 just the way you formed the question in the first 14 place.</p> <p>15 Q. Yeah.</p> <p>16 A. Can you --</p> <p>17 Q. Well, would it be evidence tending to 18 indicate that there was no carjacking?</p> <p>19 A. Are you saying whether the officer 20 believed that he was getting ready to carjack, or 21 are you saying after the fact, after all is said 22 and done?</p> <p>23 Q. Both.</p> <p>24 A. Would I -- if somebody came out and 25 said, "Yes, I thought he was going to carjack me,"</p>

SERGEANT MICHAEL BLAND

December 21, 2017

<p style="text-align: right;">Page 66</p> <p>1 I would use that as evidence.</p> <p>2 Q. In looking at the videotape, did you see</p> <p>3 any efforts by Mr. Farmer to attempt to carjack</p> <p>4 the white truck that is in the video at the</p> <p>5 beginning?</p> <p>6 A. From the two-dimensional visual</p> <p>7 depiction I get from the -- from the body camera,</p> <p>8 I don't see that.</p> <p>9 Q. Right. Does the Metropolitan Police</p> <p>10 Department teach the rear naked choke?</p> <p>11 A. No.</p> <p>12 Q. Does it teach any aspect of the rear</p> <p>13 naked choke?</p> <p>14 A. It teaches a defense to the rear naked</p> <p>15 choke.</p> <p>16 Q. How to get out of it?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So every officer who's been</p> <p>19 properly trained should know how to exit a rear</p> <p>20 naked choke?</p> <p>21 A. Well, he should.</p> <p>22 Q. Right. You say that with a smile on</p> <p>23 your face.</p> <p>24 A. Some people are better at defensive</p> <p>25 tactics than others.</p>	<p style="text-align: right;">Page 68</p> <p>1 displaying aggressive resistance. 'Aggressive</p> <p>2 resistance' is defined as that which has the</p> <p>3 potential to cause injury or substantial pain.</p> <p>4 Based upon Officer Lopera's BWC and surveillance</p> <p>5 obtained by the Venetian hotel, Farmer was lying</p> <p>6 on his stomach, attempting to keep from being</p> <p>7 handcuffed. As Officer Lopera began to strike</p> <p>8 him, Farmer appeared to be protecting his face</p> <p>9 from being hit. Farmer did not appear to be</p> <p>10 displaying aggressive resistance."</p> <p>11 Do you agree with that statement?</p> <p>12 A. I --</p> <p>13 MR. McNUTT: Objection. Form.</p> <p>14 THE WITNESS: I agree with he's not --</p> <p>15 to what I see, to what I see, I don't see -- from</p> <p>16 my vantage point, I don't see aggressive</p> <p>17 resistance. But the mid-paragraph, where it says</p> <p>18 "aggressive resistance is defined," that's</p> <p>19 actually intermediate -- that's the definition for</p> <p>20 intermediate force.</p> <p>21 BY MR. SAYRE:</p> <p>22 Q. Okay. Had would you define "aggressive</p> <p>23 resistance"?</p> <p>24 A. "Aggressive resistance" in policy, I'd</p> <p>25 have to look at policy to word it exactly how it</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. Okay. And some people pay more</p> <p>2 attention than others, I suppose, when they're</p> <p>3 being instructed.</p> <p>4 A. Human nature.</p> <p>5 Q. Yeah. All right.</p> <p>6 Take a look at page 7 of 8 again.</p> <p>7 A. I'm there.</p> <p>8 Q. Okay. The next to the last paragraph,</p> <p>9 please read that to yourself. And I apologize if</p> <p>10 we've gone over this. It will be brief, if I am</p> <p>11 repeating it.</p> <p>12 A. I read it.</p> <p>13 Q. Okay. It says that "Officer Lopera,</p> <p>14 while straddling Farmer's back, struck him</p> <p>15 approximately 10 to 12 times in the head while</p> <p>16 giving Farmer commands to 'get on your stomach.'"</p> <p>17 Did you see him in the video, your</p> <p>18 review of the video, strike Mr. Farmer in the head</p> <p>19 10 to 12 times?</p> <p>20 A. I didn't count the strikes, but I saw</p> <p>21 numerous strikes. That sounds right. 10 to 12</p> <p>22 sounds in the ballpark of what I saw.</p> <p>23 Q. Now, according -- going on in this</p> <p>24 paragraph, "According to LVMPD policy, officers</p> <p>25 should only use hand strikes when a subject is</p>	<p style="text-align: right;">Page 69</p> <p>1 was defined there. But it's basically a threat to</p> <p>2 harm against an officer, himself, or another</p> <p>3 party. It could include the use of a weapon.</p> <p>4 So to get the exact definition, just --</p> <p>5 it's just right there. It says -- it says -- here</p> <p>6 it says, "Aggressive resistance" is defined."</p> <p>7 This definition they're giving is actually the</p> <p>8 definition of intermediate level of control.</p> <p>9 Q. Okay. Let me see if I can find the</p> <p>10 definitions.</p> <p>11 A. The beginning of the policy, you'll have</p> <p>12 definitions, and you'll see your -- your levels of</p> <p>13 control will be there, but the resistance levels</p> <p>14 are actually defined later.</p> <p>15 Q. Right. This is -- take a look at</p> <p>16 page 0007. That would be the first page of the</p> <p>17 book.</p> <p>18 A. I'm there.</p> <p>19 Q. It has levels of resistance. And it</p> <p>20 starts with compliant and goes through number 5,</p> <p>21 which is aggravated aggressive resistance. Okay?</p> <p>22 A. Yes.</p> <p>23 Q. And it says, "Aggressive resistance.</p> <p>24 The subject displays the intent to harm the</p> <p>25 officer, themselves, or another person and prevent</p>

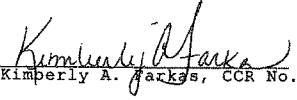
SERGEANT MICHAEL BLAND

December 21, 2017

Page 86	Page 88
<p>1 Q. Well, but you can use it in response to 2 deadly force?</p> <p>3 A. Yeah. I can use empty hands as a 4 response to deadly force also.</p> <p>5 Q. Yeah, but I'm only talking about lateral 6 vascular neck restraint.</p> <p>7 A. I understand that, too.</p> <p>8 Q. You can also use a gun in response to 9 deadly force.</p> <p>10 A. That's the only place I can use it.</p> <p>11 Q. Okay. Now -- so assuming that 12 Mr. Farmer was no more than actively resistant, no 13 level of LVNR could have been used against him; 14 correct?</p> <p>15 MR. McNUTT: Objection. Form.</p> <p>16 THE WITNESS: In May?</p> <p>17 BY MR. SAYRE:</p> <p>18 Q. Yeah. Well, assuming the policy was in 19 effect in May. Today.</p> <p>20 A. Oh, assuming today's policy?</p> <p>21 Q. Right.</p> <p>22 A. Oh, yeah. Today's policy --</p> <p>23 MR. McNUTT: I think we need a temporal 24 restriction there.</p> <p>25 THE WITNESS: If today's policy was in</p>	<p>1 incorrectly.</p> <p>2 Q. No. I understand. But it is a danger 3 in applying a neck restraint that an officer can 4 and in some cases has applied it incorrectly?</p> <p>5 A. Yes, that's a -- that's a danger.</p> <p>6 There's a potential to apply it incorrectly.</p> <p>7 Q. Okay. In fact, there have been three 8 deaths in the past of people who have had the 9 lateral vascular neck restraint applied by 10 Metropolitan police officers; correct?</p> <p>11 A. I don't know.</p> <p>12 Q. Do you have any knowledge of past deaths 13 from the application of lateral vascular neck 14 restraints?</p> <p>15 A. I remember one from way back. I 16 couldn't even tell you what it was, and I couldn't 17 tell you if there was other force that was applied 18 or anything else specific to it.</p> <p>19 Q. 2001, Phillip Lemure, lateral vascular 20 neck restraint was applied and he died.</p> <p>21 Are you aware of that?</p> <p>22 A. No.</p> <p>23 Q. 2006, James Livins, lateral vascular 24 neck restraint was applied and he died.</p> <p>25 Are you aware of that?</p>
Page 87	Page 89
<p>1 effect in May --</p> <p>2 BY MR. SAYRE:</p> <p>3 Q. Yes.</p> <p>4 A. -- and we make the assumption that he 5 was an active resistant subject, then, no, you 6 could not use the LVNR.</p> <p>7 Q. Okay. In May, assuming he was actively 8 resistant, you could have not used either level 2 9 or level 3 LVNR; correct?</p> <p>10 A. Using the assumption that he was an 11 active resistant subject, we could not use level 2 12 or level 3.</p> <p>13 Q. Now, does each of the levels of LVNR 2 14 and 3 cause increasing danger or possibility of 15 injury to the neck?</p> <p>16 A. The technique is not designed to cause 17 injury.</p> <p>18 Q. I understand. But the technique can 19 cause injury, can't it?</p> <p>20 A. If it was applied incorrectly.</p> <p>21 Q. Okay. But officers can and do apply it 22 incorrectly; right?</p> <p>23 A. Officers have.</p> <p>24 Q. Right.</p> <p>25 A. They're not trained to apply it</p>	<p>1 A. I'm not aware of any specifics.</p> <p>2 Q. 2009 Dustin Boone, also known as DJ, had 3 a lateral vascular neck restraint applied and he 4 died.</p> <p>5 You're not aware of that?</p> <p>6 A. I don't know any of the specifics on any 7 of those three.</p> <p>8 Q. Who is the most knowledgeable about past 9 deaths caused by the lateral vascular neck 10 restraint?</p> <p>11 A. Probably internal affairs. CIRT, 12 Critical Incident Review Team.</p> <p>13 Q. Who would be knowledgeable as to whether 14 any officers have been disciplined in the past for 15 an improper application of the lateral vascular 16 neck restraint?</p> <p>17 A. Internal affairs.</p> <p>18 Q. Who made the decision to change the 19 policy regarding the neck -- lateral vascular neck 20 restraint in September of this year?</p> <p>21 A. I do not know. I know there's -- I know 22 there was a collaborative effort, but I don't know 23 who specifically made those decisions, whether it 24 was CIRT, whether it was deputy chiefs and higher, 25 whether it was the captain of training. I know</p>

SERGEANT MICHAEL BLAND

December 21, 2017

1	CERTIFICATE OF DEPONENT			Page 126	
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13	* * * * *				
14	I, SERGEANT MICHAEL BLAND, deponent				
15	herein, do hereby certify and declare the within				
16	and foregoing transcription to be my deposition in				
17	said action; that I have read, corrected, and do				
18	hereby affix my signature to said deposition under				
19	penalty of perjury.				
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Page 127					
1	CERTIFICATE OF COURT REPORTER				
2					
3	STATE OF NEVADA)				
4) ss:				
5	COUNTY OF CLARK)				
6					
7	I, Kimberly A. Farkas, Certified Court				
8	Reporter licensed by the State of Nevada, do				
9	hereby certify that I reported the deposition of				
10	SERGEANT MICHAEL BLAND, commencing on December 21,				
11	2017, at 2:01 p.m.				
12	Prior to being deposed, the witness was duly				
13	sworn by me to testify to the truth. I thereafter				
14	transcribed my said stenographic notes, and that				
15	the transcript is a complete, true, and accurate				
16	transcription, and that a request was not made for				
17	a review of the transcript.				
18	I further certify that I am not a relative,				
19	employee, or independent contractor of counsel,				
20	nor a person financially interested in the				
21	proceeding.				
22	IN WITNESS WHEREOF, I have set my hand in my				
23	office in the County of Clark, State of Nevada,				
24	this January 8th, 2018.				
25					
26	<u>Kimberly A. Farkas</u> , CCR No. 741				